

Message Text

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46

ACTION EB-11

INFO OCT-01 ARA-16 EUR-25 NEA-14 IO-14 ISO-00 SSO-00

NSCE-00 USIE-00 AF-10 EA-11 RSC-01 OIC-04 AGR-20

CEA-02 CIAE-00 COME-00 DODE-00 FRB-03 H-03 INR-11

INT-08 L-03 LAB-06 NSAE-00 NSC-07 PA-04 AID-20

CIEP-03 SS-20 STR-08 TAR-02 TRSE-00 PRS-01 SP-03

FEAE-00 OMB-01 SWF-02 INRE-00 DRC-01 /235 W

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O R 061825Z SEP 74

FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 8100

INFO AMEMBASSY MEXICO

AMEMBASSY NEW DELHI

USMISSION USUN NEW YORK

USMISSION OECD PARIS

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TREASURY PASS BRADFIELD

E.O. 11652: N/A

TAGS: UNCTAD, EGEN

SUBJECT: UNCTAD TDB XIV: CHARTER OF ECONOMIC RIGHTS - DUTIES

REF: GENEVA 5643

1. GROUP B MEETING SEPT. 6 EXAMINED FOUR ALTERNATIVE FORMULATIONS OF LAST SENTENCE OF BRILLANTES TEXT AS REPORTED REFTEL. IT WAS READILY AGREED THAT ALTERNATIVE (C) IS THE PREFERRED TEXT (...EVERY STATE HAS THE DUTY TO FULFILL...ITS OBLIGATIONS UNDER THE GENERALLY RECOGNIZED PRINCIPLES AND RULES OF INTERNATIONAL LAW). SOME SUPPORT WAS MANIFESTED FOR ALTERNATIVE (A) (...ALL LIMITED OFFICIAL USE

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STATES SHALL...ACT IN FULFILLMENT...OF INTERNATIONAL

OBLIGATIONS, AND SHALL EQUALLY OBSERVE THE OTHER PRINCIPLES SET FORTH IN...CHAPTER (I)). THERE WAS NO SUPPORT VOICED FOR ALTERNATIVE (B).

2. MAIN DISCUSSION WAS ON ALTERNATIVE (D), VIZ: "IN RESPECT OF THE FOREGOING RIGHTS, ALL STATES SHALL FULFILL IN GOOD FAITH THEIR INTERNATIONAL OBLIGATIONS, SHALL REFRAIN FROM ANY FORM OF COERCION, AND SHALL OTHERWISE OBSERVE THE PRINCIPLES SET FORTH IN CHAPTER I OF THE CHARTER." CHOLLET (FRANCE) MADE FOLLOWING ARGUMENTS AGAINST THIS ALTERNATIVE:

(A) USE OF COERCION BY NATIONALIZING STATE (MILITARY FORCES TAKING OVER COMPANY RESISTING NATIONALIZATION) SHOULD NOT BE PROSCRIBED AND WOULD NOT BE SO INTERPRETED;

(B) STATES WHOSE NATIONALS ARE UNLAWFULLY EXPROPRIATED OFTEN USE JUSTIFIABLE MEASURES AGAINST THE NATIONALIZING STATE WHICH COULD BE CHARACTERIZED AS COERCIVE, E.G., WITHHOLDING ASSISTANCE, BLOCKING ASSETS, PURSUING "HOT" PRODUCTS, ETC.

3. FREELAND (UK) MADE FOLLOWING POINTS IN RESPONSE, THOUGH NOTING THAT HE DID NOT MUCH LIKE THE ALTERNATIVE, THAT HE THOUGHT HIS AUTHORITIES, PERHAPS MIGHT NOT FIND IT ACCEPTABLE, AND THAT THE ALTERNATIVE COULD ONLY BE APPROVED BY THE UK, IF AT ALL, IF THE OTHER SUBPARAGRAPHS OF THIS WHOLE PARAGRAPH MET IS NEEDS:

(A) THE REFERENCE TO COERCION WOULD ONLY APPLY TO IMPROPER COERCION, AND NOT TO THE CUSTOMARY, LEGAL RESPONSES TO NATIONALIZATION (I.E., A LAWSUIT RE A "HOT" PRODUCT IS NOT "COERCION").

(B) THE REFERENCE TO COERCION COULD PROVIDE A BASIS FOR ARGUING AGAINST DISCRIMINATORY TAKEOVERS, AND, COUPLED WITH THE TEXT ON PERMANENT SOVEREIGNTY, MIGHT PROVIDE A BASIS FOR ARGUING AGAINST COERCIVE LIMITED OFFICIAL USE

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AND MONOPOLISTIC USE OF STATE-OWNED NATURAL RESOURCES. FREELAND THOUGHT IT ADVISABLE TO KEEP THIS ALTERNATIVE ALIVE AT THIS STAGE, BUT NOT ACCEPT IT.

4. USDEL INDICATED THAT IT INCLINES TOWARD FRENCH POINT OF VIEW, AND THAT IT EXPECTED THAT WASHINGTON WILL PROBABLY BE NEGATIVE TOWARDS COERCION PHRASE, BUT THAT USG WOULD EXAMINE THE PROPOSAL.

5. AFTER USDEL QUERIED GROUP B ABOUT ACCEPTABILITY OF
FALLBACK "IN RESPECT OF THE FOREGOING, THE
INTERNATIONAL RIGHTS AND DUTIES OF STATES SHALL BE
FULFILLED IN GOOD FAITH," THE GROUP DECIDED THAT
INSTRUCTIONS SHOULD BE SOUGHT FROM CAPITALS, AND THAT
THE TEXT SHOULD NOT BE INTRODUCED AT THIS STAGE.
CHOLLET STRAONGLY ARGUED THAT, IF INTRODUCED,
"INTERNATIONAL" WOULD BE LOST, AND THAT SO FINAL A
FALLBACK POSITION SHOULD BE HELD FOR FURTHER STAGE OF
NEGOTIATIONS. DALE

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